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7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 LUXOTTICA GROUP, S.P.A., an) NO. 2:22-cv-00180-SAB
11 Italian corporation, and OAKLEY,)
12 INC., a Washington corporation,)
Plaintiffs,)
13 v.)
14 THE STORE ON THOR, LLC,)
DANIELLE COSSEY, individually,)
15 and ROBERT COSSEY individually,)
STACY COSSEY, individually, and)
TYLER COSSEY, individually)
16)
Defendants.)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)

Defendants Robert Cossey, Stacy Cossey, Tyler Cossey, and The Store On Thor, LLC hereby respond as follows to the Complaint filed by Plaintiffs in this action and assert the following affirmative defenses:

DEFENDANTS' ANSWER TO
COMPLAINT AND JURY DEMAND - 1

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1 **I. SUMMARY OF ACTION**

2 1. Admit Defendants Danielle Cossey, Robert Cossey, Stacy Cossey
3 and Tyler Cossey are Members of The Store On Thor, LLC, that Tyler Cossey is
4 the manager of The Store On Thor, LLC, and that The Store On Thor, LLC owns
5 and operates a retail store called “The Store On Thor” located at 305 S. Thor St. in
6 Spokane, WA. All other allegations in this paragraph are denied.
7

8 2. Denied.
9

10 **II. PARTIES**

11 3. Defendants Cossey and The Store On Thor lack knowledge or
12 information sufficient to form a belief as to the allegations contained in this
13 paragraph, and therefore deny the same.
14

15 4. Defendants Cossey and The Store On Thor lack knowledge or
16 information sufficient to form a belief as to the allegations contained in this
17 paragraph, and therefore deny the same.
18

19 5. Admit The Store On Thor, LLC (“The Store On Thor”) is a limited
20 liability corporation organized and existing under the laws of the State of
21 Washington, with its principal place of business at 305 S. Thor Street, Spokane,
22 WA 99202, and that The Store On Thor conducts business within the State of
23 Washington. All other allegations in this paragraph are legal conclusions to which
24

1 no response is required, and thus are denied. To the extent a response is required,
2 all other allegations in this paragraph are denied.

3 6. Defendant Danielle Cossey is the daughter of Defendants Robert and
4 Stacy Cossey. Admit Danielle Cossey is a Member of The Store On Thor and has
5 an ownership interest in The Store On Thor and the retail store of the same name.
6 All other allegations in this paragraph are denied.

7 7. Defendant Robert Cossey is the father of Defendants Danielle and
8 Tyler Cossey. Admit Robert Cossey is a Member of The Store On Thor and has
9 an ownership interest in The Store On Thor and the retail store of the same name.
10 All other allegations in this paragraph are denied.

11 8. Defendant Stacy Cossey is the ex-wife of Robert Cossey, and the
12 mother of Defendants Danielle and Tyler Cossey. Admit Stacy Cossey is a
13 Member of The Store On Thor and has an ownership interest in The Store On Thor
14 and the retail store of the same name. All other allegations in this paragraph are
15 denied.

16 9. Defendant Tyler Cossey is the son of Robert and Stacy Cossey.
17 Admit Tyler Cossey is a Member and Manager of The Store On Thor, and has an
18 ownership interest in The Store On Thor. All other allegations in this paragraph
19 are denied.

20 10. Denied.

21 DEFENDANTS' ANSWER TO
22 COMPLAINT AND JURY DEMAND - 3

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1 **III. JURISDICTION AND VENUE**

2 11. Admit.

3 12. Admit the Court has personal jurisdiction over Robert Cossey, Stacy
4 Cossey, and Tyler Cossey; that The Store On Thor is doing business in Washington
5 and this District, and that Robert Cossey, and Tyler Cossey are citizens and
6 residents domiciled in the State of Washington. Deny that there is personal
7 jurisdiction over Danielle Cossey or Stacy Cossey and/or that Danielle Cossey or
8 Stacy Cossey are citizens, residents, and/or domiciled in the State of Washington.
9

10 All other allegations in this paragraph are denied.

12 13. Admit that venue is proper in this District as to the claims asserted
13 against Robert Cossey, Stacy Cossey, and Tyler Cossey, and that these individuals
14 reside in Washington. All other allegations contained in this paragraph are denied.
15

16 **IV. FACTUAL ALLEGATIONS**

17 A. **The Allegedly World-Famous Luxottica Brands and Products.**

18 14. Defendants Cossey and The Store On Thor lack knowledge or
19 information sufficient to form a belief as to the allegations contained in this
20 paragraph, and therefore deny the same.

22 15. Defendants Cossey and The Store On Thor lack knowledge or
23 information sufficient to form a belief as to the allegations contained in this
24 paragraph, and therefore deny the same.

26 **DEFENDANTS' ANSWER TO
COMPLAINT AND JURY DEMAND - 4**

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1 16. Defendants Cossey and The Store On Thor lack knowledge or
2 information sufficient to form a belief as to the allegations contained in this
3 paragraph, and therefore deny the same.

4 17. Defendants Cossey and The Store On Thor lack knowledge or
5 information sufficient to form a belief as to the allegations contained in this
6 paragraph, and therefore deny the same.

7 18. Defendants Cossey and The Store On Thor lack knowledge or
8 information sufficient to form a belief as to the allegations contained in this
9 paragraph, and therefore deny the same.

10 19. Defendants Cossey and The Store On Thor lack knowledge or
11 information sufficient to form a belief as to the allegations contained in this
12 paragraph, and therefore deny the same.

13 20. Defendants Cossey and The Store On Thor lack knowledge or
14 information sufficient to form a belief as to the allegations contained in this
15 paragraph, and therefore deny the same.

16 21. This paragraph contains legal conclusions to which no response is
17 required, and Defendants Cossey and The Store On Thor therefore deny the same.
18 To the extent a response is required, all allegations in this paragraph are denied.

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DEFENDANTS' ANSWER TO
COMPLAINT AND JURY DEMAND - 5

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1 22. This paragraph contains legal conclusions to which no response is
2 required, and Defendants Cossey and The Store On Thor therefore deny the same.
3 To the extent a response is required, all allegations in this paragraph are denied.
4

5 23. This paragraph contains legal conclusions to which no response is
6 required, and Defendants Cossey and The Store On Thor therefore deny the same.
7 To the extent a response is required, all allegations in this paragraph are denied.
8

9 24. Defendants Cossey and The Store On Thor lack knowledge or
10 information sufficient to form a belief as to the allegations contained in this
11 paragraph, and therefore deny the same.
12

B. Oakley's Allegedly Famous Brand and Trademarks

13 25. Defendants Cossey and The Store On Thor lack knowledge or
14 information sufficient to form a belief as to the allegations contained in this
15 paragraph, and therefore deny the same.
16

17 26. Defendants Cossey and The Store On Thor lack knowledge or
18 information sufficient to form a belief as to the allegations contained in this
19 paragraph, and therefore deny the same.
20

21 27. Defendants Cossey and The Store On Thor lack knowledge or
22 information sufficient to form a belief as to the allegations contained in this
23 paragraph, and therefore deny the same.
24

25 26 DEFENDANTS' ANSWER TO
27 COMPLAINT AND JURY DEMAND - 6

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1 28. Defendants Cossey and The Store On Thor lack knowledge or
2 information sufficient to form a belief as to the allegations contained in this
3 paragraph, and therefore deny the same.

4 29. Defendants Cossey and The Store On Thor lack knowledge or
5 information sufficient to form a belief as to the allegations contained in this
6 paragraph, and therefore deny the same.

7 30. Defendants Cossey and The Store On Thor lack knowledge or
8 information sufficient to form a belief as to the allegations contained in this
9 paragraph, and therefore deny the same.

10 31. This paragraph contains legal conclusions to which no response is
11 required, and Defendants Cossey and The Store On Thor therefore deny the same.
12 To the extent a response is required, all allegations in this paragraph are denied.

13 32. This paragraph contains legal conclusions to which no response is
14 required, and Defendants Cossey and The Store On Thor therefore deny the same.
15 To the extent a response is required, all allegations in this paragraph are denied.

16 33. This paragraph contains legal conclusions to which no response is
17 required, and Defendants Cossey and The Store On Thor therefore deny the same.
18 To the extent a response is required, all allegations in this paragraph are denied.

1 34. Defendants Cossey and The Store On Thor lack knowledge or
2 information sufficient to form a belief as to the allegations contained in this
3 paragraph, and therefore deny the same.

4 **C. Defendants' Allegedly Infringing Conduct.**

5 35. Admit The Store On Thor, LLC is a limited liability company
6 organized and existing under the laws of the State of Washington and doing
7 business as The Store On Thor. Admit Defendants Danielle Cossey, Robert
8 Cossey, Stacy Cossey, and Tyler Cossey are members of Defendant The Store On
9 Thor, LLC. Deny that Defendants Danielle Cossey, Robert Cossey, and/or Stacy
10 Cossey are executives, officers, and/or governors or managers of Defendant Store
11 on Thor, LLC. Deny that Defendants Danielle Cossey, Robert Cossey, and/or
12 Stacy Cossey retain control of the company defendant and/or the retail store. All
13 other allegations contained in this paragraph are denied.

14 36. Defendants Cossey and The Store On Thor lack knowledge or
15 information sufficient to form a belief as to the allegations contained in this
16 paragraph that a representative of Plaintiffs visited The Store On Thor and/or
17 purchased any sunglasses, and therefore deny the same. Defendants Cossey and
18 The Store On Thor further lack knowledge or information sufficient to form a belief
19 as to the photographs in this paragraph and/or the allegations that the photos depict
20 products purchased at The Store On Thor, and therefore deny the same. Defendants
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1 Cossey and The Store On Thor specifically deny that any glasses purchased by
2 and/or delivered to Plaintiffs from The Store On Thor were counterfeit. All other
3 allegations contained in this Paragraph are denied.

4 37. Denied. Defendants Cossey and The Store On Thor specifically deny
5 that any counterfeit items were advertised, promoted, distributed, publicly
6 displayed, sold, and/or offered for sale at The Store On Thor.

7 38. Denied.

8 39. Denied.

9 40. Denied.

10 41. Denied.

11 42. Denied.

12 43. Denied.

13 44. Denied.

14 45. Denied.

15 **V. CLAIMS ASSERTED BY PLAINTIFFS**

16 **COUNT I**

17 **Trademark Infringement and Counterfeiting (Under 15 U.S.C. § 1114)**

18 46. Defendants Cossey and The Store On Thor incorporate by reference
19 their responses to the allegations above, as if fully set forth herein.

20 47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. This paragraph contains legal conclusions to which no response is required and Defendants Cossey and The Store On Thor therefore deny the same. To the extent a response is required, the allegations contained in this paragraph are denied. All other allegations contained in this paragraph are denied.

52. This paragraph contains legal conclusions to which no response is required and Defendants Cossey and The Store On Thor therefore deny the same. To the extent a response is required, the allegations contained in this paragraph are denied. All other allegations contained in this paragraph are denied.

COUNT II

Unfair Competition Under 15 U.S.C. § 1125(a)

53. Defendants Cossey and The Store On Thor incorporate by reference their responses to the allegations above, as if fully set forth herein.

54. Denied.

55. This paragraph contains legal conclusions to which no response is required and Defendants Cossey and The Store On Thor therefore deny the same. To the extent a response is required, the allegations contained in this paragraph are denied. All other allegations contained in this paragraph are denied.

**DEFENDANTS' ANSWER TO
COMPLAINT AND JURY DEMAND - 10**

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56. This paragraph contains legal conclusions to which no response is required and Defendants Cossey and The Store On Thor therefore deny the same. To the extent a response is required, the allegations contained in this paragraph are denied. All other allegations contained in this paragraph are denied.

COUNT III

Trademark Dilution Under 15 U.S.C. § 1125(c)

57. Defendants Cossey and The Store On Thor incorporate by reference their responses to the allegations above, as if fully set forth herein.

58. Defendants Cossey and The Store On Thor lack knowledge or information sufficient to form a belief as to the allegations contained in this paragraph, and therefore deny the same.

59. Defendants Cossey and The Store On Thor lack knowledge or information sufficient to form a belief as to the allegations contained in this paragraph, and therefore deny the same.

60. Denied.

61 Denied

62 Denied

63. This paragraph contains legal conclusions to which no response is required and Defendants Cossey and The Store On Thor therefore deny the same.

1 To the extent a response is required, the allegations contained in this paragraph are
2 denied. All other allegations contained in this paragraph are denied.

3 64. This paragraph contains legal conclusions to which no response is
4 required and Defendants Cossey and The Store On Thor therefore deny the same.
5

6 To the extent a response is required, the allegations contained in this paragraph are
7 denied. All other allegations contained in this paragraph are denied.

8 **VI. APPLICATION FOR PERMANENT INJUNCTION**

9 65. Defendants Cossey and The Store On Thor incorporate by reference
10 their responses to the allegations above, as if fully set forth herein.

12 66. Denied.

13 67. This paragraph contains legal conclusions to which no response is
14 required, and Defendants Cossey and The Store On Thor therefore deny the same.
15

16 To the extent a response is required, all allegations in this paragraph along with all
17 subsections to this paragraph are denied.

18 68. This paragraph contains legal conclusions to which no response is
19 required, and Defendants Cossey and The Store On Thor therefore deny the same.
20

21 To the extent a response is required, all allegations in this paragraph are denied.

22 **VII. DEMAND FOR JURY TRIAL**

23 69. In accordance with Federal Rule of Civil Procedure 38, Defendants
24
25 Cossey and The Store On Thor hereby demand a trial by jury on all issues so triable.

VIII. GENERAL DENIAL

Defendants Cossey and The Store On Thor deny generally and specifically deny each and every allegation contained in Plaintiffs' Complaint not specifically admitted herein, including the Prayer for Relief, as well as but not limited to the allegations and inferences contained in Plaintiffs' Introduction and section headings. Defendants Cossey and The Store On Thor further deny that Plaintiffs are entitled to damages, treble or punitive damages, equitable relief, injunctive relief, attorneys' fees, costs, pre-judgment interest, or to any relief whatsoever, and state as follows:

IX. AFFIRMATIVE DEFENSES

Further answering Plaintiffs' Complaint and, by way of affirmative defenses, Defendants Cossey and The Store On Thor alleges as follows:

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

2. Plaintiffs' damages, if any, were proximately caused by their own acts or omissions.

3. Plaintiffs' claims are barred by the doctrines of estoppel, waiver, acquiescence and/or laches

⁴ Plaintiffs' claims are barred by the doctrine of unclean hands.

5 Plaintiffs have failed to mitigate their damages, if any.

1 6. Trademark misuse.

2 7. First Amendment.

3 8. Failure to join necessary parties.

4 9. At all times relevant hereto, Defendants' actions were reasonable and
5 in good faith, and without malice.

6 10. Defendants have not infringed any applicable trademarks under
7 federal or state law.

8 11. In the alternative, any infringement, if any, was innocent.

9 12. Defendants did not have knowledge that any goods allegedly sold,
10 distributed, advertised, publicly displayed or offered for sale bearing allegedly
11 protected marks were anything less than bona fide goods, and Defendants have not
12 willfully infringed, directly or indirectly, any protected marks of Plaintiffs.

13 13. No counterfeit products were sold, distributed, advertised, publicly
14 displayed or offered for sale.

15 14. In the alternative, if trademarked goods allegedly sold were
16 counterfeit, Defendants Cossey and The Store On Thor lacked knowledge of the
17 same.

18 15. First sale doctrine.

19 16. Plaintiffs' damages, if any, were not caused by Defendants Cossey
20 and/or The Store On Thor.

21 DEFENDANTS' ANSWER TO
22 COMPLAINT AND JURY DEMAND - 14

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1 17. Without admitting that the Complaint states a claim, there has been no
2 damage, in any amount, manner, or at all by reason of any act alleged against
3 Defendants Cossey and The Store On Thor in the Complaint, and the relief prayed
4 for in the Complaint therefore cannot be granted.
5

6 18. Some or all of the marks at issue are generic.

7 19. Abandonment.

8 20. Plaintiffs' claims are barred, in whole or in part, by reason of third-
9 parties' use of any marks at issue.
10

11 21. Defendants Cossey and The Store On Thor are not liable for the acts
12 of independent third-parties over whom they have no control.

13 22. Plaintiffs' claims for injunctive relief are barred because Plaintiffs
14 cannot show that they have or will suffer any irreparable harm.
15

16 23. The alleged injury or damage suffered by Plaintiffs, if any, would be
17 adequately compensated by damages. Accordingly, Plaintiffs have a complete and
18 adequate remedy at law and are not entitled to seek equitable relief.
19

20 24. Plaintiffs cannot recover actual damages under multiple and/or
21 different theories and causes of action for the same or similar alleged acts.

22 25. Plaintiffs' claims for relief are barred to the extent they seek
23 duplicative relief for the same alleged acts and/or omissions.
24

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26 DEFENDANTS' ANSWER TO
COMPLAINT AND JURY DEMAND - 15

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1 To the extent necessary, Defendants' answers to the Complaint shall be
2 designated as defenses and affirmative defenses. Defendants reserve the right to
3 assert additional affirmative defenses.

4 **X. REQUEST FOR RELIEF**

5 WHEREFORE, Defendants respectfully pray for the following relief:

- 6
- 7 1. For the dismissal of Plaintiffs' Complaint and all of Plaintiffs' claims,
8 with prejudice;
- 9
- 10 2. For an award of Defendants' costs and attorney fees incurred herein; and
- 11
- 12 3. For such other and further relief as this Court may deem just and
equitable.

13 DATED this 31st day of August, 2022.

14 DUNN & BLACK, P.S.

16 s/ ROBERT A. DUNN

17 ROBERT A. DUNN, WSBA No. 12089

18 ALEXANDRIA T. DRAKE, WSBA No. 45188

19 Attorneys for Defendants

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2 **CERTIFICATE OF SERVICE**
3

4 I HEREBY CERTIFY that on the 31st day of August, 2022, I electronically
5 filed the foregoing document with the Clerk of the Court using the CM/ECF
6 system. The CM/ECF system will send notification of such filings to the following:
7

- 8 • Reid Johnson
9 rjohnson@lukins.com; mlindquist@lukins.com

10 DUNN & BLACK, P.S.

11 s/ ROBERT A. DUNN

12 ROBERT A. DUNN, WSBA No. 12089
13 ALEXANDRIA T. DRAKE, WSBA No. 45188
14 Attorneys for Plaintiff
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26 DEFENDANTS' ANSWER TO
COMPLAINT AND JURY DEMAND - 17

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